

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONNIE RAY HAWKINS,	§	
	§	No. 146, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0411002216A
Appellee.	§	

Submitted: September 16, 2010

Decided: December 9, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 9th day of December 2010, upon careful consideration of the appellant's brief pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On April 19, 2005, the appellant, Donnie Ray Hawkins, was found guilty by a Superior Court jury of numerous offenses including two counts of Possession of a Deadly Weapon During the Commission of a Felony (PDWDCF). On June 7, 2005, Hawkins was sentenced to a total of forty-four years and sixty days at Level V, no portion of which was suspended for probation ("original sentence"). For the PDWDCF

convictions, Hawkins was sentenced to a total of twenty years at Level V, *i.e.*, ten years for each conviction. Hawkins' convictions were affirmed by this Court on direct appeal.¹

(2) On September 4, 2009, the Superior Court issued a modified sentence order. That order corrected an error in the original sentence by removing a mistaken reference to three years of mandatory time in each of the ten-year terms imposed for the PDWDCF convictions. Except for that correction, the modified sentence remained the same as the original sentence. The modification had no substantive effect.

(3) On February 24, 2010, Hawkins, through counsel, requested an opportunity to appear in open court in connection with the September 4, 2009 modified sentence. The Superior Court granted that request, and Hawkins and his counsel appeared before the Superior Court on March 12, 2010. During that review of sentence proceeding, the Superior Court explained the modified sentence to Hawkins. This appeal followed.

(4) On appeal, Hawkins' counsel ("Counsel") has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Hawkins has raised several

¹ *Hawkins v. State*, 2006 WL 1932668 (Del. Supr.).

points for this Court's consideration. The State has responded to Counsel's brief as well as to Hawkins' points and has requested that the judgment of the Superior Court be affirmed.

(5) In his written submission, Hawkins claims that the Superior Court erred when imposing a twenty-year sentence for the PDWDCF convictions. Hawkins claims that, under the terms of the original sentence, he was "under the impression" that he was only going to serve six of the twenty years imposed. Hawkins also claims that the twenty-year sentence violates the Eighth Amendment because it exceeds his life expectancy and is disproportionate to other sentences imposed for the same conduct.

(6) "Delaware law is well established that appellate review of sentences is extremely limited."² In Delaware, "[a]ppellate review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature."³ "[I]n reviewing a sentence within statutory limits, this Court will not find error of law or abuse of discretion unless it is clear from the record below that a sentence has been imposed on the basis of demonstrably false information or information lacking a minimal indicium of reliability."⁴

² *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

³ *Id.* (quoting *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989)).

⁴ *Mayes*, 604 A.2d at 843.

(7) The statutory range of incarceration for PDWDCF is two to twenty-five years.⁵ Any sentence imposed for PDWDCF is mandatory, *i.e.*, it must be served without suspension, good time or probation.⁶ In this case, Hawkins was sentenced to ten years for each PDWDCF conviction, a sentence well within the statutory range.

(8) There is no indication in the record that the Superior Court imposed Hawkins' sentence. Based on "demonstrably false information or information lacking a minimal indicium of reliability." There also is no suggestion in the record supporting Hawkins' alleged "mistaken impression" that he would serve only six of the twenty-year sentence imposed for the PDWDCF convictions.

(9) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.⁷ The Court also must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.⁸

⁵ Del. Code Ann. tit. 11, §§ 1447(a), 4205(b)(2) (1997).

⁶ § 1447(b).

⁷ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

⁸ *Id.*

(10) In this case, the Court has reviewed the record carefully and has concluded that Hawkins' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Hawkins could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice